



Substitute Senate Bill No. 430

Public Act No. 13-304

AN ACT CONCERNING THE STATE FLEET AND MILEAGE, FUEL AND EMISSION STANDARDS, THE CERTIFICATION OF MINORITY BUSINESS ENTERPRISES AND PREFERENCE FOR A BOND GUARANTY PROGRAM.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. Section 4a-60g of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2013*):

(a) As used in this section and sections 4a-60h to 4a-60j, inclusive, the following terms have the following meanings:

(1) "Small contractor" means any contractor, subcontractor, manufacturer, service company or nonprofit corporation (A) that maintains its principal place of business in the state, [and] (B) that had gross revenues not exceeding fifteen million dollars in the most recently completed fiscal year prior to such application, and (C) that is independent. "Small contractor" does not include any person who is affiliated with another person if both persons considered together have a gross revenue exceeding fifteen million dollars.

(2) "Independent" means the viability of the enterprise of the small contractor does not depend upon another person, as determined by an analysis of the small contractor's relationship with any other person in

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regards to the provision of personnel, facilities, equipment, other resources and financial support, including bonding.

[(2)] (3) "State agency" means each state board, commission, department, office, institution, council or other agency with the power to contract for goods or services itself or through its head.

[(3)] (4) "Minority business enterprise" means any small contractor (A) fifty-one per cent or more of the capital stock, if any, or assets of which are owned by a person or persons who (i) [who] exercise operational authority over the daily affairs of the enterprise, (ii) [who] have the power to direct the management and policies and receive the beneficial interest of the enterprise, (iii) possess managerial and technical competence and experience directly related to the principal business activities of the enterprise, and [(iii) who] (iv) are members of a minority, as such term is defined in subsection (a) of section 32-9n, [(B) who is an individual] or are individuals with a disability, or [(C)] (B) which is a nonprofit corporation in which fifty-one per cent or more of the persons who (i) exercise operational authority over the enterprise, [and] (ii) possess managerial and technical competence and experience directly related to the principal business activities of the enterprise, (iii) have the power to direct the management and policies of the enterprise, and (iv) are members of a minority, as defined in this subsection, or are individuals with a disability.

[(4)] (5) "Affiliated" means the relationship in which a person directly, or indirectly through one or more intermediaries, controls, is controlled by or is under common control with another person.

[(5)] (6) "Control" means the power to direct or cause the direction of the management and policies of any person, whether through the ownership of voting securities, by contract or through any other direct or indirect means. Control shall be presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or

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holds proxies representing, twenty per cent or more of any voting securities of another person.

[(6)] (7) "Person" means any individual, corporation, limited liability company, partnership, association, joint stock company, business trust, unincorporated organization or other entity.

[(7)] (8) "Individual with a disability" means an individual (A) having a physical or mental impairment that substantially limits one or more of the major life activities of the individual, which mental impairment may include, but is not limited to, having one or more mental disorders, as defined in the most recent edition of the American Psychiatric Association's "Diagnostic and Statistical Manual of Mental Disorders", or (B) having a record of such an impairment.

[(8)] (9) "Nonprofit corporation" means a nonprofit corporation incorporated pursuant to chapter 602 or any predecessor statutes thereto.

(b) It is found and determined that there is a serious need to help small contractors, minority business enterprises, nonprofit organizations and individuals with disabilities to be considered for and awarded state contracts for the construction, reconstruction or rehabilitation of public buildings, the construction and maintenance of highways and the purchase of goods and services. Accordingly, the necessity, in the public interest and for the public benefit and good, of the provisions of this section, sections 4a-60h to 4a-60j, inclusive, and sections 32-9i to 32-9p, inclusive, is declared as a matter of legislative determination. Notwithstanding any provisions of the general statutes to the contrary, and except as set forth herein, the head of each state agency and each political subdivision of the state other than a municipality shall set aside in each fiscal year, for award to small contractors, on the basis of competitive bidding procedures, contracts or portions of contracts for the construction, reconstruction or

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rehabilitation of public buildings, the construction and maintenance of highways and the purchase of goods and services. Eligibility of nonprofit corporations under the provisions of this section shall be limited to predevelopment contracts awarded by the Commissioner of Economic and Community Development for housing projects. The total value of such contracts or portions thereof to be set aside by each such agency shall be at least twenty-five per cent of the total value of all contracts let by the head of such agency in each fiscal year, provided that neither: (1) A contract that may not be set aside due to a conflict with a federal law or regulation; or (2) a contract for any goods or services which have been determined by the Commissioner of Administrative Services to be not customarily available from or supplied by small contractors shall be included. Contracts or portions thereof having a value of not less than twenty-five per cent of the total value of all contracts or portions thereof to be set aside shall be reserved for awards to minority business enterprises.

(c) The head of any state agency or political subdivision of the state other than a municipality may, in lieu of setting aside any contract or portions thereof, require any general or trade contractor or any other entity authorized by such agency to award contracts, to set aside a portion of any contract for subcontractors who are eligible for set-aside contracts under this section. Nothing in this subsection shall be construed to diminish the total value of contracts which are required to be set aside by any state agency or political subdivision of the state other than a municipality pursuant to this section.

(d) The heads of all state agencies and of each political subdivision of the state other than a municipality shall notify the Commissioner of Administrative Services of all contracts to be set aside pursuant to subsection (b) or (c) of this section at the time that bid documents for such contracts are made available to potential contractors.

(e) The awarding authority shall require that a contractor or

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subcontractor awarded a contract or a portion of a contract under this section perform not less than [~~fifteen~~] thirty per cent of the work with the workforces of such contractor or subcontractor and shall require that not less than [~~twenty-five~~] fifty per cent of the work be performed by contractors or subcontractors eligible for awards under this section. A contractor awarded a contract or a portion of a contract under this section shall not subcontract with any person with whom the contractor is affiliated. No person who is affiliated with another person shall be eligible for awards under this section if both affiliated persons considered together would not qualify as a small contractor or a minority business enterprise under subsection (a) of this section. The awarding authority shall require that a contractor awarded a contract pursuant to this section submit, in writing, an explanation of any subcontract to such contract that is entered into with any person that is not eligible for the award of a contract pursuant to this section, prior to the performance of any work pursuant to such subcontract.

(f) The awarding authority may require that a contractor or subcontractor awarded a contract or a portion of a contract under this section furnish the following documentation: (1) A copy of the certificate of incorporation, certificate of limited partnership, partnership agreement or other organizational documents of the contractor or subcontractor; (2) a copy of federal income tax returns filed by the contractor or subcontractor for the previous year; and (3) evidence of payment of fair market value for the purchase or lease by the contractor or subcontractor of property or equipment from another contractor who is not eligible for set-aside contracts under this section.

(g) The awarding authority or the Commissioner of Administrative Services or the Commission on Human Rights and Opportunities may conduct an audit of the financial, corporate and business records and conduct an investigation of any small contractor or minority business enterprise which applies for or is awarded a set-aside contract for the

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purpose of determining eligibility for awards or compliance with the requirements established under this section.

(h) The provisions of this section shall not apply to any state agency or political subdivision of the state other than a municipality for which the total value of all contracts or portions of contracts of the types enumerated in subsection (b) of this section is anticipated to be equal to ten thousand dollars or less.

(i) In lieu of a performance, bid, labor and materials or other required bond, a contractor or subcontractor awarded a contract under this section may provide to the awarding authority, and the awarding authority shall accept a letter of credit. Any such letter of credit shall be in an amount equal to ten per cent of the contract for any contract that is less than one hundred thousand dollars and in an amount equal to twenty-five per cent of the contract for any contract that exceeds one hundred thousand dollars.

(j) (1) Whenever the awarding authority has reason to believe that any contractor or subcontractor awarded a set-aside contract has wilfully violated any provision of this section, the awarding authority shall send a notice to such contractor or subcontractor by certified mail, return receipt requested. Such notice shall include: (A) A reference to the provision alleged to be violated; (B) a short and plain statement of the matter asserted; (C) the maximum civil penalty that may be imposed for such violation; and (D) the time and place for the hearing. Such hearing shall be fixed for a date not earlier than fourteen days after the notice is mailed. The awarding authority shall send a copy of such notice to the Commission on Human Rights and Opportunities.

(2) The awarding authority shall hold a hearing on the violation asserted unless such contractor or subcontractor fails to appear. The hearing shall be held in accordance with the provisions of chapter 54.

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If, after the hearing, the awarding authority finds that the contractor or subcontractor has wilfully violated any provision of this section, the awarding authority shall suspend all set-aside contract payments to the contractor or subcontractor and may, in its discretion, order that a civil penalty not exceeding ten thousand dollars per violation be imposed on the contractor or subcontractor. If such contractor or subcontractor fails to appear for the hearing, the awarding authority may, as the facts require, order that a civil penalty not exceeding ten thousand dollars per violation be imposed on the contractor or subcontractor. The awarding authority shall send a copy of any order issued pursuant to this subsection by certified mail, return receipt requested, to the contractor or subcontractor named in such order. The awarding authority may cause proceedings to be instituted by the Attorney General for the enforcement of any order imposing a civil penalty issued under this subsection.

(k) (1) On or before January 1, 2000, the Commissioner of Administrative Services shall establish a process for certification of small contractors and minority business enterprises as eligible for set-aside contracts. Each certification shall be valid for a period not to exceed two years. Any paper application for certification shall be no longer than six pages. The Department of Administrative Services shall maintain on its web site an updated directory of small contractors and minority business enterprises certified under this section.

(2) The Commissioner of Administrative Services may revoke such certification for cause after notice and an opportunity for a hearing in accordance with the provisions of chapter 54. Any person aggrieved by the commissioner's decision to revoke such certification may appeal such decision to the Superior Court, in accordance with the provisions of section 4-183.

(3) Whenever the Commissioner of Administrative Services has reason to believe that a small contractor or minority business

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enterprise who has applied for or received certification under this section has included a materially false statement in his or her application, the commissioner may impose a penalty not exceeding ten thousand dollars after notice and a hearing held in accordance with chapter 54. Such notice shall include (A) a reference to the statement or statements contained in the application alleged to be false, (B) the maximum civil penalty that may be imposed for such misrepresentation, and (C) the time and place of the hearing. Such hearing shall be fixed for a date not later than fourteen days from the date such notice is sent. The commissioner shall send a copy of such notice to the Commission on Human Rights.

(4) The commissioner shall hold a hearing prior to such revocation or denial or the imposition of a penalty, unless such contractor or subcontractor fails to appear. If after the hearing, the commissioner finds that the contractor or subcontractor has wilfully included a materially false statement in his or her application for certification under this subsection, the commissioner shall revoke or deny the certification and may order that a civil penalty not exceeding ten thousand dollars be imposed on the contractor or subcontractor. If such contractor or subcontractor fails to appear for the hearing, the commissioner may, as the facts require, revoke or deny the certification and order that a civil penalty not exceeding ten thousand dollars be imposed on the contractor or subcontractor. The commissioner shall send a copy of any order issued pursuant to this subsection to the contractor or subcontractor named in such order. The commissioner may cause proceedings to be instituted by the Attorney General for the enforcement of any order imposing a civil penalty issued under this subsection.

(l) On or before August 30, 2007, and annually thereafter, each state agency and each political subdivision of the state other than a municipality setting aside contracts or portions of contracts shall

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prepare a report establishing small and minority business set-aside program goals for the twelve-month period beginning July first in the same year. Each such report shall be submitted to the Commissioner of Administrative Services, the Commission on Human Rights and Opportunities and the cochairpersons and ranking members of the joint standing committees of the General Assembly having cognizance of matters relating to planning and development and government administration and elections.

(m) On or before November 1, 1995, and quarterly thereafter, each state agency and each political subdivision of the state other than a municipality setting aside contracts or portions of contracts shall prepare a status report on the implementation and results of its small business and minority business enterprise set-aside program goals during the three-month period ending one month before the due date for the report. Each report shall be submitted to the Commissioner of Administrative Services and the Commission on Human Rights and Opportunities. Any state agency or political subdivision of the state, other than a municipality, that achieves less than fifty per cent of its small contractor and minority business enterprise set-aside program goals by the end of the second reporting period in any twelve-month period beginning on July first shall provide a written explanation to the Commissioner of Administrative Services and the Commission on Human Rights and Opportunities detailing how the agency or political subdivision will achieve its goals in the final reporting period. The Commission on Human Rights and Opportunities shall: (1) Monitor the achievement of the annual goals established by each state agency and political subdivision of the state other than a municipality; and (2) prepare a quarterly report concerning such goal achievement. The report shall be submitted to each state agency that submitted a report, the Commissioner of Economic and Community Development, the Commissioner of Administrative Services and the cochairpersons and ranking members of the joint standing committees of the General

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Assembly having cognizance of matters relating to planning and development and government administration and elections. Failure by any state agency or political subdivision of the state other than a municipality to submit any reports required by this section shall be a violation of section 46a-77.

(n) Nothing in this section shall be construed to apply to the four janitorial contracts awarded pursuant to subsections (b) to (e), inclusive, of section 4a-82.

(o) The Commissioner of Administrative Services may adopt regulations in accordance with the provisions of chapter 54 to implement the provisions of this section.

Sec. 2. Section 4a-100 of the general statutes is amended by adding subsection (p) as follows (*Effective October 1, 2013*):

(NEW) (p) The commissioner shall provide written notice to each contractor and substantial subcontractor issued a prequalification certificate pursuant to this section about the bond guaranty program administered by the Department of Economic and Community Development.

Sec. 3. (NEW) (*Effective October 1, 2013*) The Commissioner of Economic and Community Development shall give priority to any contractor or substantial subcontractor who is prequalified under section 4a-100 of the general statutes, as amended by this act, for participation in the Department of Economic and Community Development's bond guaranty program under public act 79-607.

Approved July 12, 2013